

FILE NO. A11-2265

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DOUGLAS A. RUHLAND,
a Minnesota Attorney,
Registration No. 94328.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION
FOR DISCIPLINE**

The above-entitled matter came before the undersigned, acting as Referee by appointment of the Minnesota Supreme Court, on April 19, 2012. The Director of the Office of Lawyers Professional Responsibility appeared by Senior Assistant Director Timothy M. Burke. Respondent Douglas A. Ruhland appeared *pro se*.

Based upon the evidence adduced at the hearing, and all of files, records and proceedings herein, the Referee makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on May 5, 1978, and has maintained a general business practice in Eden Valley, Minnesota, since that date.
2. In or about March 2008, Schlangen's Custom Cabinets, Inc. retained respondent for representation in multiple collection matters, against Terry Citrowske, Crow River Builders (two accounts), Patty Humphrey, Scott & Jeannette Hamilton, J & C Builders (two accounts), and La Dolce Vita Salone & Spa. Although there was no written retainer agreement, both Respondent and Schlangen's agree Respondent took the work for a contingent fee of one-third any amount collected, plus court costs.
3. By August 1, 2008, Respondent had collected the full amount due from the Hamiltons, Crow River Builders had gone into bankruptcy, and there was a judgment against La Dolce Vita, but the real estate was in foreclosure and there were no corporate assets. Later that summer, Respondent obtained a conciliation court judgment against Citrowske, but was unable

to locate him to pursue collection. He also obtained a conciliation court judgment against Humphrey, and entered into a payment agreement with her.

4. In the autumn of 2008 Respondent hired Schlangen's to build cabinetry on rental property that Respondent owned. On November 19, 2008, Schlangen's billed Respondent for \$9528.30 for the cabinet work. Respondent was unable to timely pay anything to Schlangen's, and the invoice remained entirely unpaid until the parties to the debt reached a compromise settlement in late 2011.

5. At this time, November 2008, Schlangen's reasonably believed there was hope for payment from Humphrey and from J & C Builders. In December 2008, Respondent determined both of these cases were uncollectible and closed the files. Respondent did not send any notice to Schlangen's of this decision.

6. In June and July 2008, Respondent sent Schlangen's a chart showing the activity and progress on the collection matters; there were no further written communications about the collection matters. Shortly after Respondent first failed to honor his obligation to Schlangen's, Respondent ceased most communication with Schlangen's, apparently to avoid any discussions about Respondent's debt. Although Respondent testified to an informal communication style and "open door" policy, he admitted he did not return telephone calls to Schlangen's that he believed concerned his individual debt. The owner of Schlangen's testified that several phone calls and messages were never returned, including those in which he sought, at least in part, to discuss the cases referred to Respondent for collection. Schlangen's did not know the status of its collection cases, and its owner testified to "concern" that Respondent may have stopped collection activity or even retained proceeds from the collection (concerns he now acknowledges were unfounded) because of the dispute arising out of Respondent's debt to Schlangen's. The Director has proven by clear and convincing evidence that Respondent failed to respond to multiple requests for communication from Schlangen's regarding the collection cases.

7. In December 2010, Schlangen's commenced a civil action against respondent. Schlangen's believed at least one of the collection cases remained open at that time, although

Respondent believed it was dormant. Respondent, however, had not advised Schlangen's of this belief and did not withdraw from representation.

8. Ultimately, there were no successful collections in the cases handled by Respondent after the relationship between Respondent and Schlangen's soured in 2008. Schlangen's does not maintain, and there is no reason to believe, that Respondent was in any way responsible for the failure to collect on the cases referred to Respondent.

Aggravating Factors

9. Respondent has a history of prior discipline as follows:

a. On July 7, 1989, Respondent was publicly reprimanded for failing to honor an agreement with opposing counsel and the trial court, failing to disclose the exercise of an attorney's lien, and failing to obey a court order to pay funds to an opposing party, in violation of Rules 8.4(c) and (d), MRPC.

b. On July 12, 1989, Respondent was issued an admonition for failing to act with reasonable diligence when he did not engage in any formal discovery in a dissolution action for over one year after the action commenced, in violation of Rule 1.3, MRPC.

c. On December 28, 1990, Respondent was issued an admonition for conflict of interest in violation of Rule 1.9(a), MRPC.

d. On April 2, 1997, Respondent received an admonition for lack of reasonable diligence and failing to keep his client reasonably informed about a case when he did not probate an estate for about one and a half years and did not inform his clients that he would not undertake certain action until his entire legal fee had been paid, in violation of Rules 1.3 and 1.4(b), MRPC.

e. On April 11, 2001, Respondent received an admonition for failing for more than two years to handle a real estate matter with adequate diligence and promptness and failing to communicate adequately regarding the matter, in violation of Rules 1.3 and 1.4, MRPC.

f. On November 18, 2004, Respondent was publicly reprimanded and placed on supervised probation for two years for failing to handle a client matter with adequate diligence, failing to communicate adequately with that client, failing to file documents by the court-ordered deadline, and failing to appear in court as ordered by the court in violation of Rules 1.3, 1.4, 1.15(c)(4), 3.2, 3.4(c) and 8.4(d), MRPC.

g. On May 17, 2006, Respondent was issued an admonition for failing to inform his client about a sanction imposed against the client and for improperly withdrawing from representation of the client in violation of Rules 1.4 and 1.16(d), MRPC.

10. Respondent has substantial experience in the practice of law.

11. Respondent is familiar with his obligations under the Rules of Professional Conduct.

12. Respondent's misconduct was intentional. After he incurred a debt to his client, Respondent chose not to communicate with his client, chose to continue representation despite a conflict of interest, and chose to continue representation when he had an obligation to withdraw. His belief that there was no likelihood of success in any of the collection cases does not either excuse his failure to withdraw from the representation or make the failure to withdraw unintentional.

CONCLUSIONS OF LAW

1. Respondent's conduct violated Rules 1.4(a)(3) and (4), 1.7(a)(2) and 1.16(a)(1), MRPC.

2. Respondent's history of prior discipline substantially aggravates the sanction for respondent's misconduct.

3. Respondent's misconduct was intentional.

4. Schlangen's did not suffer any financial harm because of Respondent's misconduct.

5. There is no factor that mitigates the sanction for Respondent's misconduct.

RECOMMENDATION FOR DISCIPLINE

Based on the foregoing findings and conclusions, the undersigned recommends:

1. That Respondent Douglas A. Ruhland be suspended from the practice of law for a minimum of 30 days.

2. That Respondent comply with Rule 26, Rules on Lawyers Professional Responsibility (RLPR).

3. That Respondent pay costs, disbursements and interest pursuant to Rule 24, RLPR.

4. That Respondent be required to successfully complete the professional responsibility portion of the state bar examination within one year of the date of this Court's order.

5. That the reinstatement hearing provided for in Rule 18(a)-(d), RLPR, be waived.

6. That upon reinstatement, Respondent be placed on supervised probation for a period of two years upon the following terms and conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, Respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

c. Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as Respondent's supervisor within two weeks from the date of the Court's order. If, after diligent effort, Respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the Respondent shall on the first day of each month provide the Director with an inventory of active client files described in paragraph d. below. Respondent shall make active client files available to the Director upon request.

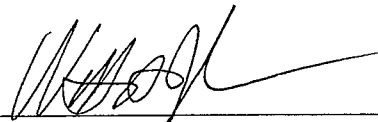
d. Respondent shall cooperate fully with the supervisor in his/her efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar month. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director monthly, or at such more frequent intervals as may reasonably be requested by the Director.

e. Respondent shall initiate and maintain office procedures which ensure that there are prompt responses to correspondence, telephone calls, and other important communications from clients, courts and other persons interested in matters which respondent is handling, and which will ensure that Respondent regularly reviews each and every file and completes legal matters on a timely basis.

f. Within thirty days from the filing of the Court's order, respondent shall provide to the Director and to the probation supervisor, if any, a written plan outlining

office procedures designed to ensure that Respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.

Dated: May 14, 2012.



William A. Johnson
Referee

MEMORANDUM

The difficult issue in this case is what is the appropriate discipline given the Respondent's misconduct and his prior disciplinary history. The undersigned recommends a 30-day suspension and 2 years supervised probation.

Respondent represented Schlangen's Custom Cabinets, Inc., in several collection matters. When Respondent found himself indebted to and unable to pay Schlangen's, he admits he violated the Minnesota Rules of Professional Conduct by failing to keep Schlangen's reasonably informed about the status of the cases (1.4(a)(3)) and by failing to withdraw from the collection cases when the client sued Respondent to collect his debt (1.7(a)(2) and 1.16 (a)(1)). The Director has proven by clear and convincing evidence that Respondent also failed to promptly comply with Schlangen's reasonable requests for information (1.4(a) (4)).

Respondent argues for a private or public reprimand as the appropriate discipline. This would be reasonable, but for Respondent's lengthy disciplinary history over his 34 year professional career.

In 1989, Respondent was publicly reprimanded for misconduct arising out of his failure to honor an agreement with opposing counsel and the trial court, his failure to disclose his exercise of an attorney's lien over funds subject to the agreement, and his failure to comply with the trial court's subsequent order that he pay the disputed funds to the opposing party. That same year Respondent was privately reprimanded for failing to act with reasonable diligence when he failed to engage in any formal discovery for over a year after being retained to represent a client in a marriage dissolution proceeding.

Eleven years later, in 1990, Respondent was privately admonished for conflict of interest where he represented a bank in mediation, replevin, and bankruptcy actions against former clients he had represented in eleven different matters in the seven and a half years immediately preceding his representation of the bank during farmer-lender mediation.

Seven years after that, in 1997, Respondent received another private admonition for failing to act with reasonable diligence where, after working about 10 months on an estate, he performed no further work on the probate file for 16 months. After he then obtained an order of complete settlement of the estate, he failed to complete the transfer of real estate from the estate for another 14 months because of his uncommunicated position he would not complete the work until he had been paid in full.

Four years after that, in 2001, Respondent received another private admonition for lack of diligence and failure to communicate with his client arising out of a two-year delay in bringing a quiet title action.

Three years later, in 2004, Respondent was publicly reprimanded and placed on two-years supervised probation for failing to act with reasonable diligence in a probate matter, failing to communicate with his client, failing to file documents by a court-ordered deadline, and failing to appear in court when ordered to do so. The terms of probation specifically required Respondent to “initiate and maintain office procedures which ensure that there are prompt responses to correspondence, telephone calls and other important communications from clients” *In re Ruhland*, 689 N.W.2d 167, 168 (Minn. 2004).

Finally, in 2006, while Respondent was still on probation pursuant to the 2004 order, Respondent was issued a private admonition for failing to inform his client about a sanction imposed against the client (Respondent assumed responsibility for his client’s failure to appear at

a pre-trial hearing and paid the \$150 sanction levied against the client) and for improper withdrawal from representation one week before trial “in a contentious divorce that has lasted more than a year.” Director’s Memorandum Supporting Admonition, *Complaint of Weismann against Ruhland*, May 17, 2006.

The instant misconduct falls well within the range of misconduct for which he has previously been privately admonished. All deal with various failings in Respondent’s relationship with his client, and, as in the instant case, no serious harm was caused to the client. Yet the prior discipline has not been successful in deterring subsequent misconduct. Given five prior private admonishments, there is simply no reason to believe a sixth private admonishment would lead to change in Respondent’s exercise of his professional responsibilities. Similarly, a third public reprimand is unlikely to achieve what the first two could not.

The undersigned recommends a briefer period of suspension in the hope this will impress upon Respondent the seriousness of his misconduct without destroying his ability and desire to practice. The Director recommendation of a 90-day suspension is rejected because of the high risk it would destroy Respondent’s solo practice in a small town. Perhaps a briefer 30-day suspension will allow him to survive professionally and financially. Respondent practices in a small town, Eden Valley, which the complainant described as having about 1000 people, two cafes, a post office and a bank. Respondent is the only attorney with an office in Eden Valley, and he appears to be meeting a real need for legal advice and counsel. The lack of attorneys in rural Minnesota is a well-recognized problem, particularly for clients with routine, non-crisis legal needs. Opting for a shorter period of suspension will allow those clients who are pleased with Respondent’s representation to decide if they can defer their need for his services during the period of suspension. But, as Respondent points out in his Memorandum, in rural locales

“reputation is everything. Everyone knows you, even before they have met you.” The period of suspension, even if brief, will certainly demonstrate to Respondent the seriousness of his failures to meet his professional responsibilities and will undoubtedly put his client base on notice of his past problems. By keeping the period brief, however, the undersigned hopes that both Respondent and the community can then decide whether his value to the community outweighs these problems.

One last issue deserves mention. The Director recommends that one of the conditions of Respondent’s probation be that he not enter into business transactions with clients. Although that seems a reasonable request given that a significant cause of the instant misconduct was the intersection of Respondent’s practice with his business activities (the cabinet work was for a rental building), a blanket prohibition seems too strong. It appears that Respondent’s business survival is dependent on several business activities besides practicing law. The Director’s recommendation prohibiting any business transactions with clients provision is deleted from my recommendation to the Court in the belief that this issue can be better handled by a supervising attorney helping Respondent with how to better separate his business and legal affairs.

W. A. J.